

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

SCOTT R. FRAKES,

Respondent.

4:21CV3067

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Motion for Summary Dismissal (filing 16), Motion for Default Judgment (filing 17), and Motion for Additional Court Documents (filing 18). Each motion will be addressed in turn.

I. MOTION FOR SUMMARY DISMISSAL

As best the court can tell, Petitioner moves pursuant to Federal Rules of Civil Procedure 56 and 12 and NECivR 7.1 for judgment in Petitioner's favor. Petitioner asserts that the court "lack[s] jurisdiction over Petitioner" because "this is a re-litigated court case that originally came out of Douglas County District Court Case Number[s] CR15-694[,] . . . CR15-2366[,] . . . and . . . CR16-3314." Petitioner also cites to several of his closed habeas cases in this court—8:18CV241, 8:21CV119, 8:18CV557, 8:21CV121, 8:18CV46, and 8:21CV120. Petitioner also appears to claim he is entitled to judgment because Respondent's Designation of State Court Records (filing 14) is insufficient.

Petitioner initiated this action on March 18, 2021, when he filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Filing 1.) This court clearly has jurisdiction over Petitioner and his habeas petition, and Respondent's allegedly insufficient Designation, which will be addressed below, provides no

basis for granting judgment in Petitioner's favor. Accordingly, Petitioner's Motion for Summary Dismissal (filing 16) is denied.

II. MOTION FOR DEFAULT JUDGMENT

Petitioner moves pursuant to Federal Rule of Civil Procedure 55 and NECivR 55.1 for a default judgment, though his motion complies with neither rule and Respondent is not in default as he filed a Motion for Summary Judgment (filing 13), Designation of State Court Records (filing 14), and Brief in Support (filing 15) in accordance with the court's June 25, 2021 progression order (filing 9). Again, Petitioner's purported basis for the motion—the allegedly insufficient Designation—does not entitle him to entry of a default judgment. Petitioner's Motion for Default Judgment (filing 17) is denied.

III. MOTION FOR ADDITIONAL COURT DOCUMENTS

Pursuant to the court's progression order (filing 9), Petitioner requests additional documents be included in the Designation of State Court Records (filing 14). Specifically, Petitioner requests (1) the bill of exceptions from his direct appeal, A-19-31; (2) the docket sheet and appeal transcript from his appeal A-18-1070; (3) the docket sheet and appeal transcript from his state habeas appeal; and (4) the supplemental docket sheet and supplemental appeal transcript from his state habeas appeal. (Filing 18.) On August 27, 2021, Respondent filed a Supplemental Designation of State Court Records providing all of the documents requested by Petitioner. (Filing 20.) Accordingly, the court will deny Petitioner's Motion for Additional Court Documents (filing 18) as moot.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Summary Dismissal (filing 16) and Motion for Default Judgment (filing 17) are denied.

2. Petitioner's Motion for Additional Court Documents (filing 18) is denied as moot. Respondent has already provided the requested documents.

3. Petitioner's brief in opposition to Respondent's summary judgment motion is currently due September 7, 2021. On the court's own motion, Petitioner shall have until **September 24, 2021**, to file his brief in opposition. Petitioner may not submit other documents unless directed to do so by the court. (*See* Filing 9.)

4. The Clerk of Court is directed to set a pro se case management deadline using the following text: **September 24, 2021**: check for Petitioner's brief.

Dated this 3rd day of September, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge